

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

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| QUASHON MILLER, | : | |
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| <i>Petitioner,</i> | : | <u>ORDER</u> |
| | : | |
| - against - | : | 10-CV-2174 (JG) |
| | : | |
| HAROLD GRAHAM, | : | |
| | : | |
| <i>Respondent.</i> | : | |
| ----- | X | |

JOHN GLEESON, United States District Judge:

Miller seeks relief pursuant to Rule 60(b)(1) & (6) of the Federal Rules of Civil Procedure from a final judgment, entered on December 8, 2010, denying his petition for a writ of habeas corpus. Miller filed the instant motion on November 12, 2011.

Assuming without deciding that the motion is timely, I deny it on the merits. Miller contends that my decision denying his petition was due to “plain error,” failure to apply the law and failure to consider all the facts. I previously rejected Miller’s claim that he had received ineffective assistance of counsel during his criminal trial, holding that he had not shown that his counsel’s purported failure to investigate a justification defense had prejudiced him. *See Miller v. Graham*, No. 10-CV-2174 (JG), 2010 WL 5056315, at *6–7 (E.D.N.Y. Dec. 6, 2010). I noted that Miller’s self-defense narrative had changed considerably over time and, thus, that Miller’s counsel “no doubt decided that a jury would be skeptical of” his story. *Id.* at *6. Although Miller points to his videotaped confession and other evidence he claims supports a justification defense, this does not alter the conclusion that his attorney’s strategic decision to forego a justification defense and recommend a guilty plea was reasonable. *See id.* at *7.

In sum, Miller has not identified any “controlling decisions or data that the court overlooked . . . that might reasonably be expected to alter the conclusion reached by the court.” *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). Accordingly, his motion is denied.

So ordered.

John Gleeson, U.S.D.J.

Date: March 8, 2012
Brooklyn, New York